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Current Topics.

War Damage Insurance.

A WRITER to *The Times* in the course of a recent letter emphasises the fact that if, as a result of the fresh consideration of the problem of war damage insurance lately directed by the Prime Minister, a workable plan emerges, many anxieties will be removed. The letter contains a number of useful suggestions which we venture to put before such of our readers who may not be acquainted with them. It is urged in substance that, if the scheme is to be national in its scope and brought into operation within the next few weeks, it should provide (*a*) that the insurance should be compulsory on all owners of private property above a very small minimum in order to secure a low rate of premium and equality of burden, and (*b*) that the scheme should be operated by established insurance companies and not by "a new, inexperienced, slow-moving and costly Government Department." The said writer's past experience as a director of insurance companies leads him to believe that, while insurance against war risks on fixed property is quite outside their scope, the companies would be only too glad to place their organisations and services at the disposal of the Government to administer equitably and economically a national scheme finally secured on the Consolidated Fund.

Evacuation Areas: Loss of Rate Income.

MR. CHURCHILL recently dealt with the position in regard to loss of income from rates in areas declared to be evacuation areas for the purpose of the Defence Regulations. The Ministry of Health, he indicated, would be prepared, on application from the authorities of those areas, to make advances out of Exchequer funds to enable the authorities to meet liabilities for which the collectable rate revenue would not suffice. The advances would be free of interest. The term "advances" meant that the Government retained the right to call for repayment, but the question how far that right would be exercised would be considered after the war in the light of the financial circumstances then prevailing both in the areas interested and in the country generally. The advances are to be conditional on the examination of the estimates of expenditure and revenue of the authorities concerned, and the Minister of Health is to arrange for officers of the Ministry to visit the towns interested and confer with the mayors and principal officials. Such conferences, it was said, would afford an opportunity for advising and assisting the local authorities on the best means of securing a reasonable economy consistent with the maintenance of essential services; and advice would also be given about the collection of revenue. Local authorities are not, in the present circumstances, to be required to increase their existing rate poundage as a condition of financial assistance. The Government proposes to recognise and validate arrangements whereby payments by local authorities in respect of county precepts are limited to that proportion of the total rate which represents the county rate which the rating authorities have been able to collect; and if in any case an unreasonable burden is thereby thrown on the county resources the Government will not refuse to consider the possibility of extending to the county council some measure of assistance.

Evacuation: Local Authorities and Insurance.

A CIRCULAR (No. 2129) has recently been sent from the Ministry of Health to local authorities concerning the liabilities incurred by the latter—both to their employees and the general public—in carrying out their duties in connection with the Government evacuation scheme. In regard to Civil Defence Volunteers, it is pointed out that the Personal Injuries (Emergency Provisions) Act, 1939, provides for the payment of allowances, pensions or grants to persons defined as such by s. 8 (1) of the Act who sustain "war service injuries." A Civil Defence Volunteer is defined as a person certified to be a member of a Civil Defence Organisation, a list of which is contained in the First Schedule to the Personal Injuries (Civilians) Scheme, 1940. Organisations established for the purpose of assisting in the transport of persons transferred in pursuance of an evacuation plan and organisations consisting of unpaid persons who assist in billeting persons so evacuated are included in this list. Section 3 of the Personal Injuries (Emergency Provisions) Act, 1939, it is said, provides in effect that in respect of war injuries and war service injuries no compensation or damages shall be payable under the Workmen's Compensation Acts, 1925–1938, or the Employers' Liability Act, 1880, or under any enactment or contract or at common law on the ground of negligence, nuisance or breach of duty. The circular points out that there is consequently no need for a local authority to insure against the risk of physical injury to a Civil Defence Volunteer arising out of his duties, and no premium paid after the date of the circular (26th August) in respect of such insurance will be recognised as a charge to Evacuation Account. Where such insurance has been effected the insurance company should be approached with a view to an adjustment of the premium paid. The liability incurred by a local authority as regards persons who are employed for evacuation purposes and are not covered by the Personal Injuries (Civilians) Scheme is considered to be not different from that incurred for other employees. It is thought, therefore, that it should be possible to insure at the same rates; and cases of proposals to charge abnormal rates of premium should be reported to the Ministry. Where it is the practice of a local authority to insure against injury to employees additional expenditure on premiums due to the fact that an employee is engaged on evacuation work will be recognised as a charge on Evacuation Account. An authority which does not insure may do so, and if it does not take this course any claim should be investigated and full details should be submitted to the Ministry. The circular also deals with risks to third parties which may arise in buildings used for the purpose of the Government Evacuation Scheme—such as maternity homes, isolation hospitals, sick bays, hospitals, group billets, and communal feeding centres. The risks are those normally met with in similar institutions and, it is thought, should be insurable at normal rates. The position as to the charging of premiums on Evacuation Account and the submission of claims where no insurance is effected is similar to that just indicated in regard to employees not covered by the Personal Injuries (Civilians) Scheme.

Air-Raid Warnings.

READERS will be familiar with the new system of air-raid warnings which has been devised for industrial establishments as the result of consultations between the Government and representatives of employers and employees with the object of maintaining production in spite of raids. The system involves the continuance of work after the siren until a further signal is received. This, as has been pointed out in a leaflet circulated to all the industries concerned, clearly involves risk ; and in order to reduce such risk it is essential (*a*) that watchers should be posted on roofs of the various establishments or at other vantage points to give warning of danger, and (*b*) that protection should be provided at or near the actual work places. It is pointed out that working after the siren will not affect the workers' rights to compensation for personal injury, nor will it affect the employers' position under the Personal Injuries (Emergency Provisions) Act.

Air-Raid Shelters.

THE Home Secretary was recently asked in the House of Commons whether the provision of Haldane-type shelters ranked for grant, whether the same amount of grant was given for any type of shelter approved by him, and whether a London borough was permitted to determine the type of shelter which was provided for the safety of its inhabitants. Sir JOHN ANDERSON indicated in reply that the type of shelter to which reference had been made might in suitable cases be approved for use as public shelters. As regards the percentage rate of grant available, no distinction was drawn between one approved type of shelter and another. In reply to the last part of the question it was said that local authorities in providing air-raid shelter were expected to act in accordance with the general policy of the Government and in consultation with the Department's Regional Staffs.

Air Raids and Wages.

THE problem occasioned by periods of enforced idleness during air raids in reference to wages will doubtless be solved on reasonable lines of give and take by the various industries concerned. Meanwhile it is of interest briefly to record the recommendations to employers which have been made by the Baking Trade Board (England and Wales). It is suggested that workers who voluntarily carry on work during air-raid warning periods should be paid at the rate of a time and a half. It is further recommended that if, because of time spent taking shelter during a warning period, a worker is unable to work his ordinary forty-eight hours a week, he should be paid for forty-eight hours, provided that, if the opportunity is afforded, he may be required to work forty-eight hours. The Board states that this principle should apply also to a worker whose ordinary hours are less than forty-eight, and that he should receive the amount due for his ordinary hours of work, with the provision that, if the opportunity arises, he may be required to work up to his normal number of hours. These recommendations apply alike to male and female workers in the trade in question.

The Housing (Emergency Powers) Act.

USEFUL information concerning the administration of the Housing (Emergency Powers) Act is contained in a recent note in *The Times* from its Parliamentary Correspondent. It is recalled that local authorities are empowered under the Act to repair war-damaged houses, if the owners are unable or unwilling to do so, where a damaged house is capable of being made fit for habitation at reasonable expense and lack of housing accommodation in the area of the local authority make it necessary that the building should be rendered so fit. Local authorities may also carry out at once such temporary repairs to a damaged house as may be immediately necessary to avoid danger to health. *The Times* Parliamentary correspondent states that local authorities are being encouraged by the Minister of Health and the Regional Commissioners to interpret generously their obligations under the Act, that most of them seem to be doing so, and that in many areas damage to houses has been permanently repaired within a few days and householders have nothing but praise for the prompt assistance given. It appears that most local authorities are taking what is described as the commonsense view that their obligations should not be bound too much by the letter of the Act. Other authorities have been urged to take the same line. It is the common practice of local authorities to effect temporary repairs, including new tiles or slates or glass for broken windows, though in some London areas there is more difficulty than elsewhere about the carrying out temporary repairs because the degree of danger often makes it doubtful whether any repairs to damaged houses are worth doing at the present time. As has previously been indicated in these columns, expenses are charged on the owners but no demand is to be made for payment until the end of the war, the cost being met meanwhile by loans to the local authorities by the Ministry of Health. The same note contains the interesting announcement that, in order to regularise the position, the Government intend to introduce an amending Bill which will remove certain doubts that have arisen about the precise intentions of the Housing (Emergency Powers) Act. The Bill will legalise what has come to be existing practice and it will be made clear, *inter alia*, that the question of the existence of alternative housing accommodation in the area does not affect the obligation to execute first-aid repairs to damaged houses where these are necessary.

Trustee in Enemy Occupied Country.

The Times of 5th September contains a note on a summons on which the trustees of a will asked the court whether they had power under the Trustee Act, 1925, to appoint a new trustee in place of the testator's widow, who was living in Brussels at the time of the German invasion, and, so far as the plaintiff trustees were aware, was still in Belgium. CROSSMAN, J., declined to lay down any general rule to the effect that trustees had such power in these circumstances. A general rule of that kind might well be susceptible of misuse, and the learned judge intimated that he could not find any evidence that the widow was "incapable." The case was one in which the right course was for the court to appoint a new trustee. The evidence was enough to justify the court's doing so under s. 41 of the Trustee Act, 1925. Subject to the production of the proper affidavit of fitness, his lordship said he would appoint the person whom the summons asked should be appointed in place of the testator's widow, and would make the necessary vesting orders. He would dispense with service on the widow.

Income Tax : Deductions at Source.

THE working of the new system of income tax payment by deductions to be made by employers at source is explained in the new assessments which have recently been sent out. The first instalment is to be deducted by employers in equal amounts from all payments of remuneration between 1st November, 1940, and 30th April, 1941, and the second instalment will be similarly deducted from payments to be made between 1st May and 31st October, 1941. Taxpayers are advised that if the notification to an employer does not reach him in time for deductions to begin on the first pay day in the above-mentioned period the deductions will begin as soon as possible after the receipt of the notification and will be spread over the remaining pay days in the period. No deduction of tax will be made which will reduce the net amount of the remuneration to less than £2 a week ; and any balance of tax which cannot be deducted owing to this restriction will be deductible from subsequent payments. Subject to this provision, the whole of the tax must be deducted during the relevant period, but the amounts of the periodical deductions may be varied in any case where remuneration is paid at irregular intervals. The expression "remuneration" includes, *inter alia*, salary, wages, fees, pension, commission, bonus and sums paid on account thereof.

Recent Decisions.

IN *State of Spain* v. *Chancery Lane Safe Deposit and Offices Co., Ltd., and Others* (*The Times*, 13th September), in which the plaintiffs sought to restrain the first-named defendants from parting with possession of bonds or securities deposited with them in the names of other defendants, CROSSMAN, J., approved of a settlement whereby the proceedings should be stayed, a sum standing to the credit of an account at a bank in the names of one of the defendants and the plaintiffs' solicitors should be paid to the plaintiffs' solicitors for the use of the plaintiffs, and certain bonds were to be recognised as the property of the plaintiffs, and the last-mentioned defendant was to execute in favour of the plaintiffs or as they might direct any assignment which they might require for facilitating the recovery of the bonds or the proceeds of sale thereof.

In *R.* v. *Cadwallader* and *R.* v. *Jackson* (*The Times*, 17th September) the Court of Criminal Appeal (HUMPHREYS, TUCKER and STABLE, JJ.) dismissed applications for leave to appeal against the appellants' convictions at Manchester Assizes of conspiracy and endeavouring to cause disaffection among His Majesty's Forces. Leave to appeal against sentences was likewise dismissed.

Wills of Men in the Forces.

(*Continued from p. 532*).

It is now necessary to consider who are entitled to the privilege of making informal wills, and in what circumstances they may do so.

The term "soldier" in the Wills Act is by s. 5 of the Wills (Soldiers and Sailors) Act, 1918, extended to include a member of the Air Force. It comprises all ranks in the army and has been held to include a surgeon in the East India Company's service (*In the Goods of Donaldson*, 2 Curt. 386); a colonel in the R.A.M.C. attached to a hospital in France during the Great War (*In the Goods of Taylor, supra*); and even an army nurse attached to a hospital ship (*In the Goods of Stanley* [1916] P. 192); but not an assistant commissioner having authority over troops during riots, though martial law had been declared (*In the Goods of FitzGerald*, 23 J.P. 519). The term would probably now be held to include members of the Women's Auxiliary Services and of the Local Defence Volunteers, though not of the A.R.P. and kindred services.

It is an essential condition of the validity of the will that the soldier should be "in actual military service."

This phrase is, as we have seen, very nearly equivalent to, but somewhat wider than, the words "*in expeditione*," used in the Roman law, which required that the soldier should have done something towards fighting the enemy. It is to be given a liberal construction; it refers to a state of fact (see *per* Hill, J., in *In the Goods of Grey* [1922] P., at p. 142). It is, however, well settled that a soldier, whether at home or abroad, in time of peace is not within it. There must be a state of war; though a declaration of war is not essential, as is shown by the cases of *Re Booth, supra*, where the will was made during the bombardment of Alexandria in 1882, and *In the Goods of Tweedale, supra*, where there had been only frontier disturbances.

It is not necessary that the soldier should be actually engaged in the campaign; the test adopted in *In the Goods of Hiscock* [1901] P. 78, was that he must have taken some step towards joining the forces in the field, e.g., gone into barracks with a view to subsequent embarkation, though the order had not been given; or, as in *In the Goods of Thorne*, 4 Sw. & Tr. 36; cf. *In the Goods of Coleman, supra;* joined an expeditionary force in course of preparation. And subsequent decisions have established that, even if the soldier has done no act himself, his position will be sufficiently altered by orders to his regiment to go on active service, whether it is to proceed directly or indirectly to the seat of war (see *Gattward* v. *Knee* [1902] P. 99; *Stopford* v. *Stopford*, 19 T.L.R. 185; *In the Goods of Gordon*, 21 T.L.R. 653). The high-water mark of these cases is represented by *In re Kitchen*, 35 T.L.R. 612, where orders to the soldier to hold himself in readiness to go, coupled with the granting to him of "overseas leave," were held sufficient, though no order for embarkation had been given; and *In the Goods of Godley*, 41 I.L.T.R. 160, where there had been only an intimation that the regiment was likely to be ordered abroad. But in the above cases the regiment was, in a sense, mobilised or ready for service, and *In re Stable, supra*, where the validity of a will made by a cadet at Sandhurst was in question, the proceedings were adjourned to enable evidence to be given as to whether the testator was under actual orders to go abroad. It has been considered in several cases (*In the Goods of Phipps*, 2 Curt. 368; *In the Estate of Taylor, supra; Re Booth, supra*) as material that the soldier was by military law on active service at the time when the will was made.

It seems that in the present circumstances of threatened invasion, England is to be regarded as the "seat of war," as it was by Hannah, J., in *In the Goods of Taylor, supra*, even during the Great War, and that all men now joining up for training should be considered in actual service, at any rate, as from the time when their training is completed or they receive orders to proceed to any station. In any case, in the event of actual invasion, which, as Sir Francis Jeune pointed out in *In the Goods of Hiscock, supra*, was more present to the minds of the persons who framed the laws of this country in the time of Charles II than to the legislators of our own time, merely taking a man from his home to man the walls of his native town would be a sufficient step to entitle him to be considered on actual service.

"Service" for the present purpose does not cease until the full conclusion of operations. Thus, in *In re Limond, supra*, a will made by a member of an escort to a party engaged on the delimitation of the frontier with a view to the peace treaty was upheld, though operations were considered by the Government to have ceased for the purpose of granting medals for the campaign. But as regards the individual soldier, service may come to an end prior to the termination of the war. Thus, in *In the Goods of Grey, supra*, where the testator had been sent to hospital for an operation and was under no orders for future service, though posted a major in another regiment, it was held that he was neither in the field, nor proceeding to or from the field, nor in any place for the purpose of proceeding to or from the field, and that consequently the will was invalid. On the other hand, in *Godman* v. *Godman, supra*, a will made by a prisoner in a German camp was upheld.

The term "mariner or seaman" has been held to include the merchant service (*In the Goods of Milligan*, 2 Rob. 108); an admiral (*In the Goods of Austin, ib.*, 611); a naval surgeon (*In the Goods of Rae*, 27 L.R. Ir. 116); and a purser (*In the Goods of Hayes*, 2 Curt. 338); and has been said to comprise "every person employed in any branch of the naval service of His Majesty or of the merchant service, from the highest to the lowest" (*In the Goods of Hayes, supra; In the Goods of Hale* [1915] 2 Ir. R. 362; cf. *In the Estate of Anderson* [1916] P. 49). Even a lady typist attached to the "Lusitania" was held in *In the Goods of Hale, supra*, to be included. It appears from the well-known case of *Hudson* v. *Barnes*, 43 T.L.R. 71, where it was sought to set up a will written on an egg-shell, that the phrase would cover a pilot whose ordinary business extended to tidal waters.

It is generally necessary that the seaman should be "at sea" when he makes the will, though this condition is to a certain extent relaxed by s. 2 of the Wills (Soldiers and Sailors) Act, 1918, in regard to members of H.M. naval or marine forces.

The words "at sea" have been defined as "engaged on some voyage or some work in connection with the actual navigation of the sea or for the purposes of the sea" (*per* Horridge, J., in *In the Estate of Thomas*, 34 T.L.R., at p. 628). It is not essential for the seaman to be actually on the high seas; a will made in harbour is valid, even if the ship is laid up and under no orders to sail (*In the Goods of MacMurdo*, 1 P. & D. 54; *In the Goods of Rae, supra; In the Goods of Patterson*, 79 L.T. 123).

On the other hand, if the ship is actually at sea, the will may in some cases be supported, even though the seaman was not on board in the capacity of a seaman; e.g., if he is returning home on sick leave (*In the Goods of Saunders*, 1 P. & D. 16). Further, a seaman who goes on shore in the course of the voyage may be at sea for this purpose (*In the Goods of Ley*, 2 Curt. 375); though an officer who was on leave in order to be married was held in *In the Estate of Thomas, supra*, not to be so. An admiral who lived on shore while actually directing operations has been held to be at sea, but not one who was merely living in the residence appropriated to the commander on the station (*In the Goods of Austin*, 2 Rob. 611; *Euston* v. *Lord Seymour*, cited in *In the Goods of Hayes, supra*). And a sailor who was invalided and sent into hospital on sick leave was held not entitled to the privilege, though he was retained on the ship's books (*In the Estate of Thomas, supra*).

Under s. 2 of the Wills (Soldiers and Sailors) Act, 1918, members of H.M. naval or marine forces are entitled to make informal wills not only when at sea but also when so circumstanced that if soldiers they would be in actual military service.

It was held in *In the Estate of Yates* [1919] P. 93, that the mere fact that the sailor was under orders to sail was sufficient to bring him within the section. But the wording of the section clearly indicates that where it does not apply the validity of the wills of soldiers and seamen is governed by different principles. This was recognised in English cases prior to the Act of 1918 (e.g., *In the Estate of Thomas, supra*), where the *ratio decidendi* of *In the Goods of Hale* was criticised), but the decisions of Irish Courts in *In the Goods of Hale, supra*, and *Barnard* v. *Birch* [1919], 2 Ir. R. 404, in which the cases of soldiers and sailors were treated as analogous, appear to have proceeded on principles which, at any rate since the Act, are not applicable. In *In the Goods of Hale, supra*, a will made on shore at Liverpool by a typist who worked regularly in a shipping company's office there between voyages on their ships, and had received orders to join the "Lusitania," with which she went down, was upheld by Madden, J. On the other hand, in *Barnard* v. *Birch, supra*, where the captain of an Irish mail steamer, who lived on shore and made daily voyages to Ireland, had made an informal will while living at home for a month, but after he had received instructions, or knew that in the ordinary course of his employment he would resume duty the next day, probate was refused by Dodd, J., on the ground that the captain was no more preparing for the new voyage at the end of his stay than at the beginning, and had taken no step towards the voyage.

In *In the Estate of Anderson, supra*, probate of a will made in barracks by a man called up on the naval reserve was refused by Bargrave Dean, J., but the real ground of the decision appears to have been that the man had never actually joined a ship. These decisions, like all those on similar questions, merely decide that on the particular facts the seaman was, or was not, at sea; but it was clearly recognised in the judgment

in *In the Estate of Yates, supra*, that, as a matter of principle, a seaman under orders to sail is not for that reason alone to be deemed to be at sea.

Under the Navy and Marines (Wills) Act, 1865, as amended by the Navy and Marines (Wills) Act, 1930, the will of a seaman or marine (as there defined) in H.M. naval or marine forces is invalid to pass any wages, prize money, bounty money, grant or other allowance in the nature thereof, or any effects or money in the charge of the Admiralty, unless it complies with the ordinary formalities of a civilian's will; but the Admiralty now has power under the Navy and Marines (Wills) Act, 1939, to relax these provisions in certain respects. There are also certain other enactments dealing with the administration of soldiers' and sailors' estates, and their debts, pensions, etc., and the payment over of their property by the Board of Trade, for which reference should be made to the standard text-books on executors.

It is provided by s. 6 of the Navy and Marines (Wills) Act, 1865, that the will of a seaman or marine made while a prisoner of war is valid for all purposes, provided (1) it is in writing and signed by him, and his signature is made or acknowledged by him in the presence of, and is in his presence attested by, one witness, who is either a commissioned officer belonging to H.M. naval or marine or military forces, or a notary public; or (2) is made according to the form of the law of the place where it is made; or (3) conforms to the requirements of a civilian's will. It appears that such a will might also now be validated by s. 2 of the Wills (Soldiers and Sailors) Act, 1918.

A Conveyancer's Diary.

Re Dean and Perpetuity.

A CORRESPONDENT writes, referring to my recent article about legacies for the benefit of animals, and asks me to explain why the annuity in *Re Dean*, 41 Ch. D. 552, was not void for perpetuity. As will be remembered, the testator devised his real estate in an ordinary strict settlement subject to and charged with an annuity of £750, payable to his trustees for a term of fifty years if any of various specific horses and hounds should so long live. The question in the case arose because the trustees were directed to apply the annuity for the benefit of the horses and hounds, and it was decided that such a trust was valid, though not directly enforceable by any *cestui que trust*. The validity of the annuity was not challenged, and rightly so, because, though it was one for fifty years defeasible earlier in the event of the death of all the said horses and hounds, it was vested from the beginning. The perpetuity rule is a rule for preventing the too long postponement of the absolute vesting of property; it is not a rule which controls divesting or vesting in possession. For example, in *Re Coleman* [1936] Ch. 528, the testator gave a share of residue to one of his sons upon discretionary trusts for life and subject thereto upon similar discretionary trusts for any wife whom the son might leave for life and subject thereto for the children of the son in equal shares at the age of twenty-one or earlier marriage. The first trust of income was, of course, good, as it was defined wholly to take effect within a life in being; the second trust was bad, because the discretion was to last throughout the life of any wife of the son, a life not necessarily in being. The third trust was again good, as it was bound to vest in interest, though not in possession, within the son's life and twenty-one years thereafter. The rule is a rule about vesting, and where one has estates which vest forthwith, or must necessarily vest within the period, they are not bad for perpetuity, even though one of the estates may be for a long fixed period. Were this not so, the scheme, so common in old settlements, of limiting the estate to the eldest male line subject to a portions term of 500 or a thousand years, would have been impossible. But once a limitation is bad for perpetuity all other limitations "ulterior to and dependent on" it are likewise bad. This point may raise rather difficult questions, as in *Re Coleman* and in *Re Canning* [1936] Ch. 309. In both of those cases there were other gifts which were to take effect *subject to* gifts void for perpetuity, but which were already vested and were therefore not dependent on the void gift. The question whether a gift is dependent or independent is one of construction, and is therefore one to be decided, as Farwell, J., pointed out in *Re Canning*, before one considers what effect one's opinion on construction would have from the perpetuity point of view.

Specific Legacies: Dividends.

Where one buys an investment on the Stock Exchange, the rules of that institution provide for the destination of any accruing dividend. At some stages of the financial year the dividend may be paid to the vendor as registered holder, but in fact be due to the purchaser. There then has to be an adjustment; but in any event, the course to be taken is more or less cut and dried, under the contract for sale.

But where a testator gives a specific sum of stock by his will, the general law regulates the destination of accruing dividends in the absence of some special direction in the will. Under the Apportionment Act, 1870, all "rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly." It was thought at one stage that this provision did not apply to specific legacies, on the authority of *Whitehead* v. *Whitehead*, L.R. 16, Eq. 528. But that decision of Sir R. Malins, V.-C., was contained in a judgment only one sentence in length, and the same learned judge recanted from it in *Pollock* v. *Pollock*, L.R. 18 Eq. 329. There is no doubt but that the latter decision is to be treated as correct. If, therefore, a testator dies having bequeathed a specific legacy of stock, the specific legatee is entitled to any dividend which may accrue after he becomes entitled; his title, of course, relates back to the death, even though the legal estate in the stock is not transferred to him until a later date. In arriving at the true apportionment one has to remember that dividends on ordinary and preference stock differ from interest upon debentures or other money lent. An instalment on account of the latter is almost invariably payable in respect of a period ending with the date of payment (though arrears of debenture interest paid late under a moratorium would be an exception). Ordinary and preference dividends are generally declared some time after the end of the period in which they were secured and paid later still. Thus the ordinary dividends on the stock of the main line railways for 1939 were declared in about the first week of February, 1940, and paid in the course of March, 1940. If, therefore, the testator died on 15th December, 1939, leaving to A £1,000 ordinary stock of a railway, the dividend of (say) 3 per cent. paid in March, 1940, would have to be so apportioned as to give A the proportion for sixteen days out of the three hundred and sixty-five, and the rest to the estate. If the executors still had the stock vested in them in March, 1940, they would receive the dividend and would pay the small extra sum to A in addition to transferring the stock; if the stock had already been transferred to A, he would have to repay to the executors most of the dividend. There is no direct authority on the treatment of interim dividends for this purpose, but it seems clear on principle that, since such dividends are only advance payments on account of the dividend for the whole year, the total of the interim and final dividends should be ascertained and the adjustment made by means of the necessary proportions of that total.

The Act does not, however, apply to the case where the testator gives to A an option to purchase specific stock from his estate, which is exercised by a sale by private treaty. Here (in the absence of express provision) it is held that as from the date of the contract in exercise of the option "the purchaser has bought the tree, and with it the fruits that are ripening on the tree" (*Re Wimbush* [1940] Ch. 92, 99).

Landlord and Tenant Notebook.

Verbal Notice to Quit.

THE desirability of giving notice to quit in writing need not be emphasised; but practitioners are sometimes called upon to advise clients who wish to know whether a current verbal notice is effective. Certain text-books suggest, if they do not actually say, that the answer depends solely on the consideration whether the tenancy itself be a verbal one: if yea, the notice is good; if no, it is bad. Apart from the fact that this is not accurate when the tenancy is of an agricultural holding within the Agricultural Holdings Act, 1923 (of which more later), close examination of the authorities commonly cited does not, I submit, reveal adequate support for the proposition.

The three cases to which the reader is usually referred are *Doe d. Macartney* v. *Crick* (1805), 5 Esp. 196; *Roe d. Dean and Chapter of Rochester* v. *Pierce* (1809), 2 Camp. 96; and *Bird* v. *Defonrielle* (1846), 2 Car. & Kir. 415.

In *Doe d. Macartney* v. *Crick* we are told that the two defendants held or had held under a lease granted to them by the predecessor in title of Lord Macartney, running, apparently, from year to year, from Old Michaelmas. One day (which must have been on or before 8th April, i.e., six months before the Old Michaelmas preceding the bringing of the action) Lord Macartney sent for one of the defendants, told

him that he (Lord Macartney) wanted to occupy the premises himself and expected him (defendant) to quit, but would permit him to stay on till Christmas rent free; and the defendant in question expressed his gratitude. Then, on 8th April, a written notice to quit at Christmas was served; but this was not, it appears, relied on in the action. Two objections were said to have been raised: the notice was to one defendant only and could not affect the other's moiety; it was verbal, and therefore insufficient. Lord Ellenborough, C.J., overruled both: notice to one joint tenant was enough, and parol notice was sufficient.

Reading this report of what is sometimes the only authority cited to support the proposition, one cannot help being reminded of the reporter's notorious deafness. One wonders how, at a time when "lease" rarely included "tenancy agreement," the defendants' holding came to be a yearly one. But this does not excuse those who have read the judgment of Lord Ellenborough as authority for the proposition that verbal tenancies only can be determined by verbal notice. Indeed, what is reported strongly suggests the reverse, as does the headnote.

Coming to *Roe d. Dean and Chapter of Rochester* v. *Pierce*, the facts here were that the defendant occupied premises "without a lease" and had been given verbal notice to quit by the steward of the Chapter. But the argument advanced by the defence was not that a written notice was necessary in all cases; it was contended that as the landlords were a corporation, notice must be under their seal, or must be given by one holding their power of attorney given under seal. It was held that they could adopt the notice by bringing the proceedings in ejectment. There was no reference to *Doe d. Macartney* v. *Crick*. And I fail to see anything in the case which throws any light on the question whether verbal tenancies are the only kind capable of being determined by verbal notice to quit.

Lastly, *Bird* v. *Defonvielle* was an action for rent due under an alleged quarterly tenancy, the defences including the contention that no tenancy had been granted and that, alternatively, it had been duly determined by a verbal notice to quit given by the defendant. The facts showed that what had been agreed had been reduced to writing but the document had been neither signed nor stamped. In the event, the plaintiff was held to have proved the tenancy, but the verbal notice was also upheld.

We have thus a case of a verbal tenancy determined by verbal notice; but does this imply that a periodic tenancy evidenced by a written agreement, or created by deed (if such there be) can not be so determined? That the judgment might easily have contained a dictum to that effect is, no doubt, plausible; but what Erle, J., is reported to have said is "I think also that there is evidence of a parol demise; and that the issue on the demise should be found for the plaintiff and that the defendant has made out his plea of notice to quit." I submit that it is carrying things too far to contend that this implies that the validity of the notice depended on the form, or lack of form, of the agreement.

There is nothing startling in the proposition that the subsequent fate of a term is not governed, in point of form, by the way in which it was created. Though estoppel or the doctrine of surrender by operation of law may sometimes informally effect assignments or surrenders, the provisions of L.P.A., 1925, which prescribe instruments under seal for these purposes, apply to terms however created.

Likewise, the Agricultural Holdings Act, 1923, while it nowhere insists on tenancies being evidenced by writing at the time of the grant (though refusal by a tenant to execute an agreement later on may debar the tenant from receiving compensation for disturbance: s. 12 (1) (*f*)) provides that in the case of a tenancy for a term of two years or more the tenancy shall not terminate on the expiration of the term for which it is granted unless not less than one year, etc., before the date fixed a *written* notice has been given by either party of his intention, etc.: s. 23 (1).

Court Papers.

IN THE HIGH COURT OF JUSTICE—CHANCERY DIVISION.

EXTENSION OF TRINITY SITTINGS.

Rota of Registrars in attendance on

Date.	Court of Appeal.	Judge.
Sept. 23 ..	Andrews	Ritchie
„ 24 ..	Ritchie	Andrews
„ 25 ..	Andrews	Ritchie
„ 26 ..	Ritchie	Andrews
„ 27 ..	Andrews	Ritchie
„ 28 ..	Ritchie	Andrews

Our County Court Letter.

Negligence of Waitress.

IN *Lester and Wife* v. *Athersmith*, at Rhyl County Court, the claim was for £75 as damages for negligence. The case for the plaintiff was that in August, 1939, they were staying at the defendant's boarding house. On the 16th August, the plaintiffs were at breakfast, and a maid brought in a tray, on which were two plates of bacon and eggs, a large pot of tea, and a jug of boiling water. The tray was negligently placed on the back of the female plaintiff's chair, and, while the maid was putting the plates of bacon on the table, the tray either slipped or tilted. The jug of boiling water then emptied itself over the female plaintiff's right hip, but there was no immediate sign of scalding. After changing her clothes, the plaintiff spent the day sitting out of doors, but took medical advice in the evening. Two further dressings were applied at Rhyl, but on her return home the plaintiff was ordered to bed, and was incapacitated for seven weeks. The defendant had paid the Rhyl doctor's bill, and had promised to defray any further expense incurred. There had been no suggestion of contributory negligence prior to the hearing. The case for the defendant was that the maid had had six years' experience as a waitress, and the accident had happened owing to the female plaintiff turning in her chair, in order to give the maid more room to unload the tray. The maid was upset by the occurrence, but was told by the plaintiff not to worry, as it had been an accident and was not the maid's fault. His Honour Deputy Judge Morris gave judgment for the plaintiffs for £23 16s. 5d., with costs.

The Quality of Cake.

In *Rowan and Others* v. *Thomas Scott and Sons (Bakers), Ltd. and Wilson*, at the Liverpool Court of Passage, the claim was for damages for negligence against the first defendants and for damages for breach of warranty against the second defendant. The case for the plaintiff was that she had bought a cake at the shop of the second defendant. As a result of eating the cake, illness was caused to the plaintiff and two of her children. The city analyst discovered three grains of rat excreta at the bottom of the cake. This had not been baked in with the cake. The first defendants' case was that they had not been negligent, as they had been baking for fifty-six years without complaint, and their foreman confectioner had never seen a rat in the bakery in his twenty years' experience. The second defendant's case was that she had sold similar cakes for over twenty years without complaint, and had never had rats on her premises. The presiding judge, Sir W. F. K. Taylor, K.C., gave judgment for the defendants, with costs (see *Donoghue* v. *Stevenson* [1932] A.C. 562, and *Grant* v. *Australian Knitting Mills, Ltd.* [1936] A.C. 85).

Consideration for House Purchase.

In *Griffiths* v. *Dawson*, at Kidderminster County Court, the claim was for £20 as the balance of the purchase money of a house. The plaintiff was a builder, and on the 20th October, 1939, he had executed a conveyance to the defendant of a house then completed for occupation. The purchase price was £385, and the deposit was £25, of which only £5 had been paid. The defendant had been a party to a mortgage from a building society, which had advanced £360. This left £20 due from the defendant. The defendant's case was that there was a subsequent agreement under which the plaintiff agreed to forego £20 on the original bargain if he could resell the house for cash. The plaintiff was therefore estopped from claiming the balance of the original purchase price. Alternatively, the amount claimed was not due. His Honour Judge Roope Reeve, K.C., gave judgment for the amount claimed, payable at £1 a month, and gave leave to proceed.

Decisions under the Workmen's Compensation Acts.

The Definition of an Employer.

IN *Heath* v. *Jenks and Williams*, at Stafford County Court, the applicant's case was that in May, 1939, he had made his home with the second respondent, who provided board and lodging and paid the applicant 2s. 1d. a day for six days a week. The applicant helped with the early-morning milking and tidied up on Sundays. He was free for the rest of the day, and worked for any other farmer who would employ him. On the 2nd October the applicant was asked to help with the first respondent's threshing. While so doing, the applicant sustained an injury, involving the amputation of the right leg. The first respondent's case was that he was not the employer, and there was no contract between himself and the second respondent for the loan or hire of the workman. The

second respondent's case was that he was not the employer at the time of the accident. His Honour Judge Finnemore observed that there was an artificial definition of "employer" in the Workmen's Compensation Act, 1925, s. 5 (1). Normally an employer was the person in whose actual employment and under whose orders the workman was at the time of the injury. The above subsection included in the definition a person who temporarily lent on hire or loan, to another person, a workman who had entered into a contract of service with him. As the applicant was free, on the 2nd October, during the daytime to be employed by anyone, the second respondent had no right in law to withhold his consent. The employer was therefore the first respondent. An award was made of 18s. 5d. a week, as for total incapacity, from the date of the accident, with costs.

Recurrence of Nystagmus.

In *Shotton* v. *Cannock Chase Colliery Co., Ltd.*, at Lichfield County Court, the claim was for an award of £1 1s. 7d. a week from the 14th March, 1939. The pre-accident wages were £4 3s. 2d., and the applicant had been certified as suffering from nystagmus on the 9th June, 1937. In September, 1937, he registered at the Employment Exchange, and his compensation was reduced to £1 a week. The applicant subsequently obtained work as a commissionaire at £2 a week, but still received compensation at £1 until the 2nd March, 1939. The applicant was then examined, and was found to have recovered from nystagmus, as there was no oscillation of the eyeballs. Notice to terminate compensation was duly given, but in October, 1939, the applicant was examined on behalf of his union. The medical opinion was that there was increased susceptibility to another attack, and the applicant's evidence was that an attack would come on if he bent down and rose too quickly. The predisposition to nystagmus prevented the applicant from working in a mine. The respondents' case was that there were two classes of men, one being the type who, having once had nystagmus, were susceptible to a second attack, while the other type were liable to a second attack from extraneous causes, e.g., domestic or political worry or influenza. The respondent was in the latter class, and a recurrence was not due to the accident, viz., the first attack, but to his nervous or constitutional condition. His Honour Judge Finnemore referred the case to a medical referee, who reported that the applicant was free from the disease. Any fresh attack would be due to lack of nerve control. No award was accordingly made.

Reviews.

Principles of Company Law. By J. Charlesworth, LL.D., of Lincoln's Inn, Barrister-at-Law. Third Edition, 1940. Demy 8vo. pp. xxxii and (with Index) 328. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. Price 7s. 6d. net.

In the review of the second edition of this students' textbook in these columns a third edition was predicted "in the not very distant future" (83 Sol. J. 130, 18th February, 1939). This prophecy has been handsomely fulfilled. The present edition incorporates notes on the Prevention of Frauds (Investments) Act, 1939, and such important recent decisions as *Southern Foundries, Ltd.* v. *Shirlaw* (1940), 109 L.J.K.B. 461, dealing with the liability in damages of a company to its managing director whose employment is ended owing to a change in the articles, and *Re Cleaden Trust, Ltd.* [1939] Ch. 286, dealing with a secretary's lack of power to borrow money on his company's behalf in the absence of express authority to do so. The decision of Bennett, J., in *Scott* v. *Frank F. Scott (London), Ltd.* [1940] 1 Ch. 217, recorded at p. 31 of this book, that although articles of association are proved not to accord with the intention of the signatories they cannot be rectified by the court, has now been confirmed by the Court of Appeal (see *ante*, p. 513). The swift success achieved by this extraordinarily good book speaks for itself.

Oke's Magisterial Formulist. By James Whiteside, Solicitor of the Supreme Court, and Clerk to the Justices for the City and County of the City of Exeter. 12th Edition, 1940. Royal 8vo. pp. xxxi, 1067 and (Index) 112. London: Butterworth & Co. (Publishers), Ltd. Price £4 net.

The present edition makes this famous work a nonagenarian. It takes on a new lease of life by reverting to its original author's intention that it should be used as a companion volume to a text-book of law. The forms therefore appear in the order in which the law appears in "Stone's Justices Manual." The addition of a considerable amount of matter was necessitated by the numerous statutes passed since 1930, the date of the last edition. In spite, however, of such legislation as the Road Traffic Acts, 1930 to 1934, the Children and Young Persons Act, 1933, the Firearms Act, 1937, and the Food and Drugs Act, 1938, the editor has ingeniously succeeded in avoiding any substantial increase in the size of the book, while at the same time maintaining its comprehensiveness. An outstanding merit of the present edition has been the entire recasting of hundreds of forms and the removal of archaisms and redundancies. This should be a notable contribution to the growing tendency towards the modernisation and simplification of proceedings in courts of summary jurisdiction. The whole work is arranged to secure the maximum amount of convenience in reference. The first three of the four parts contain 132 pages and deal with general forms relating to indictable offences and under the Summary Jurisdiction Acts, and a number of miscellaneous forms. Part IV deals in alphabetical order with all the many offences which fall to be dealt with by courts of summary jurisdiction and occupies 880 pages. A supplement of 152 pages is bound with the work and contains forms applicable to emergency proceedings arising under the Defence (General) Regulations, 1939, the Aliens Order, 1920, the Courts (Emergency Powers) Act, 1939, and the other numerous statutes of this nature. The index is careful, accurate and comprehensive, and completes a work which reflects great credit on editor and publishers alike. The task required a high order of responsibility, and the limited magisterial and professional public for which the book is indispensable will find in the present edition that painstaking perfection of achievement which is necessary for the due administration of justice.

Books Received.

The Law of Civil Defence. By R. Wynne Frazier, of Gray's Inn, and the Midland Circuit, Barrister-at-Law. 1940. Demy 8vo. pp. cccx and (with Index) 1930. London: The Solicitors' Law Stationery Society, Ltd. Price £5 5s. net.

The Poetry Review. September–October, 1940. Containing a poem entitled, "The Pilot," by Christmas Humphreys, Barrister-at-Law. London: The Poetry Society. Price 1s. net.

Loose-Leaf War Legislation. Edited by John Burke, Barrister-at-Law. Part 10. 1940. London: Hamish Hamilton (Law Books), Ltd.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool, Manchester and Birmingham.]

Obituary.

Mr. G. W. Jackson.

Mr. George William Jackson, solicitor, of the firm of Jackson & Sons, solicitors, of Exeter, died on Monday, 9th September, at the age of sixty-seven. Mr. Jackson was admitted a solicitor in 1896.

Mr. W. A. Robinson.

Mr. William Arnold Robinson, solicitor, of High Holborn, and Ilford, Essex, and his wife, Mrs. Dorothy Edna Robinson, died on Thursday, 12th September. Mr. Robinson was thirty-five years of age. They met their deaths as the result of a motor accident. Mr. Robinson was admitted a solicitor in 1930.

During a recent air-raid warning, the President of the Divorce Division, Sir Boyd Merriman, sat in a small room in the basement of the Law Courts and continued the hearing of divorce cases. His desk was a table, around which counsel and court officials also sat. The witnesses stood near the judge while they gave evidence. Mr. Justice Bucknill went to an adjoining room, where he also concluded his day's list.

Three of the four courts at the Central Criminal Court adjourned during air raids on Monday last. Sir Gerald Dodson, Recorder of London, presiding over Court 2, carried on as usual. He asked the jurors in waiting to sit at the back of the court because there was a possible danger of glass splinters falling from the glass-domed roof. Later, when the anti-aircraft guns began to boom, Sir Gerald Dodson adjourned his court to his private room, where the hearing of the case before him proceeded. This is the first time within memory that a trial has been conducted in a judge's private chamber at the Central Criminal Court. Later in the day, during the period of raid warning, Judge Beazley resumed the hearing of a case in his private room.

To-day and Yesterday.

Legal Calendar.

16 September.—On the 16th September, 1836, two privates of the Grenadier Guards were placed at the bar of Queen Square Police Court, charged with knocking down several persons in Orchard Street, Westminster. The night before they and several other soldiers had got drunk at a notorious house in Duck Lane, " and, after getting into a beastly state of intoxication and breaking every window in the den of infamy to which they had resorted, sallied into the streets and knocked down every person they met with." The police arrested them with difficulty, but before they appeared in court, the persons injured had been induced by payments of compensation to withdraw their charges.

17 September.—On the 17th September, 1790, George Barrington was tried at the Old Bailey for picking the pocket of Mr. Henry Townsend.

18 September.—On the 18th September, 1792, the trial of the " Bounty " mutineers on board H.M.S. " Duke " at Portsmouth closed with the verdict of the court and the sentences. Six men were found guilty and condemned to be hanged and four were acquitted. In the end only three of the former were executed. Thus ended the tragic aspect of that great sea adventure which began when Captain Bligh was turned adrift in an open boat with the men who remained loyal to him to sail seven weeks to Coupang. The story of the mutineers who did not return but settled on Pitcairn Island became, after initial disasters, a primitive idyll.

19 September.—On the 19th September, 1803, young Robert Emmett was tried in Dublin before Lord Chief Justice Norbury. His ill-conceived but heroic rising had ignominously failed and during the hearing which lasted from half-past nine in the morning till half-past ten at night he offered no defence. Without leaving the box the jury found him guilty. Then in a ringing voice which could be heard even in the corridors outside, he made that last famous speech of his, which ended : " When my country takes her place among the nations of the earth, then and then only can my character be vindicated ; then only can my epitaph be written."

20 September.—When Pepys's uncle Robert died in 1661 he left his affairs in a tangle and all his papers in confusion. In particular the surrenders of his copyhold land were mislaid and could not be found. Accordingly, on the 20th September, there was some tiresome business to transact in the manorial Court of Graveley in Huntingdon. " I said little, till by and by that we came to the Court, which was a simple meeting of country rogues with the Steward and two Fellows of Jesus College that are lords of the town ; and I producing no surrender, though I told them I was sure there is and must be one somewhere, they found my uncle Thomas heir-at-law as he is ; and so my uncle was admitted and his son also in reversion."

21 September.—On the 21st September, 1739, " Thomas Limpus was executed for robbing the Western Mail, on the top of Dunkit Hill, which is very high and within a mile of Wells. He said very little at the gibbet, but left two letters behind him. He made some equivocating denials of the robbery, though so plainly proved and owned by him to several scores of people from the time of his being taken to the day of his trial. He turned Roman Catholic the day after he was taken in France on an accusation of robbing the Bristol Mail in February, 1738, and so escaped then, and 'tis believed he pretended to die in that religion."

22 September.—On the 22nd September, 1880, Chief Baron Kelly was buried in Highgate Cemetery " among green lanes on a hillside commanding beautiful and extensive views." His body had been brought from Brighton, and by his wish he was laid beside his wife who had died six years before. After lying in a mortuary chapel in his house at 8, Connaught Place, he was carried to All Saints, Margaret Street, with the full magnificence of a Victorian funeral in an open canopied hearse drawn by four horses. There he was laid on a catafalque flanked by great candles and covered with a richly embroidered pall while the church service majestically unfolded itself.

The Week's Personality.

George Barrington (whose real name was Waldron) was one of the more amusing products of the eighteenth century criminal classes. His father was a silversmith at Maynooth and in early childhood he displayed talents which attracted the attention of a dignitary of the Irish Church, who placed him in a Dublin grammar school. Unfortunately he got himself into a scrape by stabbing a schoolfellow with a penknife, and having robbed the master he joined a company of strolling players. He learnt the art of picking pockets from the manager of the company, who persuaded him to practice it at the Limerick races, but after his teacher had been sentenced to transportation he transferred his activities to England, assuming at first a clerical habit. Sometimes he moved unobtrusively in the highest circles. At a levée on the Queen's birthday he robbed a nobleman of a diamond order. At Covent Garden Theatre he robbed the Russian Prince Orloff of a gold snuffbox set with brilliants worth £30,000. He was caught, but the Prince magnificently refused to prosecute. The picking of less exalted pockets got him two sentences of hard labour on the hulks in the Thames, but on the first occasion his good conduct and on the second the intervention of an influential visitor secured his release. At last, in 1790, he was transported, but his gentlemanly deportment and the good that really was in him still stood him in good stead. On the way to Botany Bay he frustrated a conspiracy of the convicts to mutiny. He was rewarded, and, two years later, emancipated. He became high constable of Parametta and died venerable and highly esteemed.

Sale of the Red Barn.

It was lately announced that the Red Barn, which gave a popular name to the most theatrically successful murder in the annals of our criminal courts, was to be sold by auction. There have been many crimes more dramatic than that of the young Suffolk farmer, who chose an isolated outbuilding on his land as the place for disposing of the girl that past imprudence was forcing him to marry, but the sinister note in the name of that structure instantly fixed the crime in the popular imagination and in time almost gave it the status of folklore. In broad outline legend and history correspond, though the persons in the drama differ markedly from those in the crime. Maria Marten was not the innocent young girl, child of a fine old yeoman, meeting her seducer by chance amid the gaiety of a country fair, but the twenty-six year old daughter of a local molecatcher, with a reputation by no means untarnished before she met William Corder. Nor was he the irresistibly handsome villain, wealthy and unscrupulous, but an ordinary young farmer, rather stout in build, who looked more than his twenty-four years.

Corder's Crime.

The Red Barn, where the chief scene of the tragedy was played, was the rendezvous William had given Maria when, her relations pressing him hard, he had promised to marry her. They were to drive to Ipswich for a licence and, to conceal their errand from local gossips, she agreed to come to the meeting place dressed as a man. While she was changing her clothes there he shot her, afterwards burying the body under the earthen floor. As the ballad vendors made him say :—

" ' If you'll meet me at the Red Barn, as sure as I have life,
I'll take you down to Ipswich town and there make you my wife.'
I straight went home and fetched my gun, my package and my spade.
I went into the Red Barn and there I dug her grave."

Afterwards Corder gave her friends accounts of her doings at Yarmouth, in France and in the Isle of Wight, till he disappeared into the protective vastness of London. Finally about a year after the crime, the girl's father decided to search the Red Barn, and there he found her body. The sequel was that Corder was condemned to death and hanged at Bury St. Edmunds in the presence of several thousand people. At the Barn itself a nonconformist preacher assembled about 5,000 listeners to hear him unfold the morals of the crime. The town where Corder died preserved his skeleton at the hospital. An enthusiastic surgeon tanned his skin to bind an account of the murder and the trial.

We understand that Mrs. Margaret Satchell, solicitor, and partner in the firm of Ramsden & Co., solicitors, of Gracechurch Street, London, E.C.3, has been injured by a bomb splinter. She is, however, making good progress. Mrs. Satchell, who is a daughter of the senior partner. Mr. F. H. Ramsden, was wounded whilst serving as an ambulance driver.

The Law Courts has suffered damage during recent air-raids. One Chancery Court was demolished when a high explosive bomb crashed into the west wall of the main building. The Lord Chancellor's Court on one side and another Chancery Court on the other were also extensively damaged. Windows in all courts in the West Gallery on the first floor were shattered and the glass fragments strewn through the corridors. The blast also smashed some of the valuable large stained glass windows in the great hall. The damage was confined to the west side of the building.

Notes of Cases.

COURT OF APPEAL.

S. & A. Services, Ltd. *v.* Dickson.

Scott, Clauson and Goddard, L.JJ. 3rd June, 1940.

Emergency legislation—Judgment for delivery up of chattel—Issue of writ of delivery—Not the exercise of a "remedy which is available" to the plaintiff—Leave of appropriate court not necessary—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (2) (*a*).

Appeal from a decision of Cassels, J., in Chambers.

By a hire-purchase agreement dated the 13th April, 1939, the plaintiffs agreed to let to the defendant a motor car on the terms that the defendant should pay to the plaintiffs £79 in consideration of the option to purchase the car, and should pay a monthly rent of £5 5s. 4d. The payments under the agreement were duly made until, owing to the war, the hirer made default, with the result that in January, 1940, the plaintiffs brought proceedings by specially indorsed writ for the return of the car. They obtained judgment in default of appearance by the defendant and then applied for leave under R.S.C. Ord. XLVIII, r. 1, to issue a writ of delivery of possession of the car, obtaining an order from Master Baker to that effect. Subsequently the defendant entered an appearance and applied for an order that the plaintiffs should not be permitted to issue a writ of delivery without obtaining leave under the Courts (Emergency Powers) Act, 1939, and to have the order of Master Baker set aside. Master Burnand dismissed that application, and Cassels, J., dismissed the appeal from his decision. The defendant appealed. By s. 1 (2) of the Courts (Emergency Powers) Act, 1939, " . . . a person shall not be entitled, except with the leave of the appropriate court—(*a*) to proceed to exercise any remedy which is available to him by way of . . . (ii) the taking of possession of any property . . ."

CLAUSON, L.J., delivering the judgment of the court, said that the point at issue was the true meaning of the words "A person shall not be entitled except with the leave of the appropriate court to proceed to exercise any remedy which is available to him by way of the taking of possession of any property." The defendant argued that, when the plaintiffs applied to the court to order the issue of the writ of execution they were proceeding to exercise a remedy which was available to them by way of taking possession of the car. The words, as a mere matter of English, did not bear the construction for which the defendant contended. To apply to the court to use its powers to remedy the grievance suffered by the plaintiffs by reason of the defendants retaining possession of the plaintiffs' car without paying for it was crucially different from an exercise of a remedy by the plaintiffs themselves. To ask the court to order the sheriff to seize the car and deliver it to the plaintiffs was one thing; for the plaintiffs to exercise their remedy by taking possession of the property was quite another. When the court had exercised its remedial jurisdiction the plaintiffs would receive possession of the property from the court's officer; to describe the process under which the plaintiffs received an article from the court's officer as a process of taking the article was a misuse of language. Further, s. 1 (1) and (3) were directed to placing control upon a plaintiff who sought to enforce certain judgments of the character there enumerated; had the Legislature intended to place control upon a plaintiff who sought to enforce judgment for delivery of a chattel, nothing would have been easier than to include such a judgment among those enumerated in those subsections. The Legislature had not done so. Section 1 (2) (*a*) was directed to a wholly different matter, namely, to placing control upon a person who sought to exercise certain remedies available to him, such remedies being grouped under five sub-heads. The language used was clearly consistent only with those remedies being extra-judicial. As the court construed the section, a man who was contractually entitled to delivery of a chattel was controlled in regard to his right to seize it himself, but was quite free to obtain a judgment for delivery of the chattel and then actual delivery of it. The result, it was said, would be that a claimant to a chattel would not seize it himself, but would procure it through the machinery of an action. That seemed to be the case. The appeal must be dismissed.

COUNSEL: *G. O. Slade; Melford Stevenson.*

SOLICITORS: *Rollit, Sons & Haydon; Goulden, Mesquita & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

General Accident, Fire & Life Assurance Corporation and Another *v.* Midland Bank, Ltd., and Others.

Sir Wilfrid Greene, M.R., Scott and Goddard, L.JJ.
6th June, 1940.

Insurance—Policy insuring various persons for respective interests—Not a joint insurance—Damage to interest of one insured—Fraudulently excessive claim—Claim paid by cheque to all insured and indorsed by them—Insurers entitled to repayment only from insured making claim.

Appeal from a decision of Tucker, J.

The plaintiff corporation in March, 1935, insured the defendants, Plant Brothers, Ltd., the defendant bank, and the defendants Scoffin and Willmott, Ltd., the freeholders, for 20 per cent. of their respective interests, against damage by fire to Plants' stock, and also insured the building. The policy provided for forfeiture of benefits in the event of any fraudulent claim under it. Lloyd's underwriters, represented by the plaintiff, one Drysdale, insured the defendants for the remaining 80 per cent. In 1937 a fire occurred at the building. The plaintiffs paid their respective shares of the claim made, all the insured endorsing the cheques, and Plants paying the money into their account with the defendant bank. The plaintiffs then discovered that an employee of Plants had caused the fire, and Scoffin and Willmott, Ltd., and the bank admitted for the purposes of the action that Plants' claim in respect of their stock was fraudently excessive. It was not suggested that anyone but the employee had caused the fire. The plaintiffs accordingly brought this action against the three insured for repayment of the sums paid to meet Plants' claim. Plants, having gone into liquidation, did not appear. Tucker, J., held that Plants had made their claim in their own right, the other defendants' endorsements being made merely in order to enable Plants to receive the money in satisfaction of their claim; so that the action failed. The plaintiffs appealed.

Sir WILFRID GREENE, M.R., having examined in detail the differing interests of the three insured, said that counsel for the plaintiffs had argued that the policies created a joint insurance, but had maintained that success in that argument was not essential to his case. He (his lordship) thought that it was essential. There could be no objection to combining in one insurance a number of persons having different interests in the subject-matter of the insurance, but an insurance of that character could not be called a joint insurance; the interest of each insured was different; the covenant of indemnity given by the policy in such a case necessarily operated as a covenant to indemnify in respect of each individual a different loss which the various insured might suffer; there was no joint element at all. Between the bank, with their floating charge, and Scoffin and Willmott, Ltd., the freeholders, there was no joint risk or interest, and the measures of loss suffered by them would be different. Such a policy might better be described as a composite policy. In any event, however, the words appearing after the names of the three insured in the policy: "for their respective rights and interest," were not apt to create a joint insurance, assuming that the circumstances could be said otherwise to constitute a joint insurance. Further, the insurers' undertaking to "pay to the insured the value of the property or the amount of the damage" did not support the argument of a joint policy. The fact that payment fell to be made to all three could not have the effect of turning the payment into an indemnity of all three: here, in the matter of damage to stock, only Plants had suffered any damage, so that the payment to all three was an indemnity only to them. In any event, however, the clause did not call for payment to all three insured in respect of any loss suffered, even if only one should be interested in the loss. The word "insured" should not every time it appeared necessarily be construed as meaning "all the insured." As a result of the damage to stock of the three insured only Plants suffered any loss: The only contract of indemnity calling for a payment was that between Plants and the plaintiffs. Counsel for the plaintiffs then contended that even if the policies could not be construed as joint the payment in settlement of the claim was in the circumstances a payment to all three insured. He (his lordship) did not agree: the quality and nature of the payment must be determined by reference to the obligation which it discharged. It was there that the question of joint insurance arose as crucial. If it was not joint any payment by the insurers must necessarily be in discharge of the particular contractual indemnity. Plants were entitled as against the other two insured that the money paid in respect of damage to stock should be paid over to them. With regard to the indorsement of the cheque by all three insured, it was impossible to accept the argument that a person whose name was inserted on a cheque as payee by mistake, and who indorsed it and handed over the proceeds to the person entitled to the payment was liable to repay the money to the drawer if it turned out that the cheque had been drawn under a mistake of fact. The appeal accordingly failed because the appellants had failed to establish that the money paid under the policy was paid to or received by the defendant bank or Scoffin and Willmott, Ltd.

SCOTT and GODDARD, L.JJ., agreed.

COUNSEL: *Miller*, K.C., *Samuels*, K.C., and *Cyril Miller; John Morris*, K.C., and *H. G. Robertson* (bank); *Willink*, K.C., and *Granville Sharp* (for *W. L. McNair*, on war service).

SOLICITORS: *William Charles Crocker; Simmons & Simmons; Edward D. K. Busby.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rating Authority for the Borough of Barking *v.* Central Electricity Board.

Scott, Clauson and Goddard, L.JJ. 5th July, 1940.

Rating and valuation—Electrical undertaking—Property in various parishes—Method of assessment—Profits basis formula—Departure from formula—Question of fact whether justified—Accounts of undertaking and estimates of future working relating to period after making of rate—Whether to be considered in making assessment.

Appeal from a decision of the Divisional Court (84 SOL. J. 406; 56 T.L.R. 583) given on an appeal by case stated under s. 31 (5) of the Rating and Valuation Act, 1925.

The Central Electricity Board owned electrical apparatus throughout England and Wales, and various premises which they occupied for the purpose of transforming and transmitting electricity under the

powers conferred on them by the Electricity Supply Acts. The board owned in the area of the Barking rating authority pilot wires, an electricity sub-station, and transmission-towers and lines. The premises were assessed as a hereditament in the Barking valuation list at a rateable value of £1,244. In May, 1934, the board objected that the assessment was excessive. In January, 1935, the rating authority made a proposal to increase the assessment to £8,436; the board objected. The Southern Essex Assessment Committee increased the assessment to £2,100. Quarter sessions on appeal by the rating authority decided that the profits basis was the correct basis of assessment, and that there were no special circumstances to justify departure from it; that on that basis the proper assessment was nil; but that, there being no cross-appeal by the board, the assessment of £2,100 must be affirmed. Quarter sessions also held that evidence concerning the board's accounts subsequent to the making of the rate on the 1st April, 1934, and their estimates of future workings up to 1939 should not be taken into consideration in connection with the assessment in question. The Divisional Court dismissed the rating authority's appeal, holding that it was a question of fact whether there were circumstances making it necessary to replace the profits formula by another, and that no such circumstances existed in the present case. The rating authority appealed. (*Cur. adv. vult.*)

GODDARD, L.J., reading the judgment of the court, said that, like the Divisional Court, the court approached the question on the footing that quarter sessions held themselves bound by *Kingston Union Assessment Committee* [1926] A.C. 331, to adopt the profits basis. Since that decision it must be regarded as a rule of rating law that, in the case of a public utility undertaking whose operations extended over areas beyond the limits of an individual parish, the profits basis was the only one to be applied in fixing the value in any particular parish, unless there were some special circumstances which rendered that method impossible of application. That basis had been applied ever since *R.* v. *Mile End Town Overseers*, 10 Q.B. 208, followed by *R.* v. *West Middlesex Waterworks Co.*, 1 E. & E. 716, and had been fully explained by Lord Hailsham, L.C., in *Railway Assessment Authority* v. *Southern Railway* [1936] A.C. 266, at p. 275; 80 SOL. J. 223. It was, however, contended for the appellants that, because of the special rights and duties conferred by statute on the respondent board, they were so different from those undertakers to whom the doctrine had hitherto been applied as to make it wholly inapplicable in the present case. The court could not agree with that. The board were eminently a public utility and a profit-making corporation, and the only difference between their undertaking and that of the Metropolitan Water Board, or any other similar concern, for rating purposes, was that the total ambit of their areas of supply was far greater; which, indeed, would seem to afford all the more reason why the doctrine should apply to their hereditaments. It was further contended that, if the doctrine did apply, the circumstances set out in detail in the case stated were sufficiently special to render it inapplicable to the board. Both Lord Cave in *Kingston Union Assessment Committee* v. *Metropolitan Water Board, supra*, and Lord Hailsham in the *Southern Railway Case, supra*, said that there might be special circumstances rendering the profits basis inapplicable, though no indication was given in either of those cases of what circumstances would or might be sufficient. The court were satisfied that there were no such circumstances here, and they agreed with the Divisional Court on that matter. The court expressed no opinion, since it was unnecessary to do so, on the question whether what constituted a circumstance sufficiently special to make the profits basis inapplicable was a question of fact, as the Divisional Court had held, or was one of law. With regard to the question whether the estimates of the board subsequent to 1934 were rightly excluded by quarter sessions, it was in the opinion of the court settled by the two cases in the House of Lords above referred to that the profits basis involved calculation not on what might happen in the future, but on the profits ascertained down to the latest period before the date of the rate or, in the present case, the preparation of the valuation list. The accounts to the 1st April, 1934, were relevant; those subsequent to that date were irrelevant. The board were further entitled to take the objection that the estimates were private documents and exempt from production. It followed that the appellants were not entitled to cross-examine the respondents' witnesses in order to find out the contents of existing documents which were privileged. The appeal must be dismissed.

COUNSEL: *S. G. Turner*, K.C. (for *Trustram Eve*, K.C., on war service), and *Scott Henderson; Craig Henderson*, K.C., and *Erskine Simes*.

SOLICITORS: *Lees & Co.*, for *E. R. Farr*, Town Clerk, Barking; *R. H. Fox*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

In re Oram; Oram *v.* Oram.

Bennett, J. 11th July, 15th August.

Administration—Will—Residue given on trust for sale and conversion—Direction to divide into two shares—One share settled—Appropriation to settled share—Date of valuation.

The testator, who died in 1937, after giving a number of large pecuniary legacies, gave all his residuary real and personal estate to his trustees upon the usual trusts for sale and conversion. By cl. 18 he directed his trustees to stand possessed of the net residue of the proceeds of sale and conversion and of any unsold or unconverted property, upon trust to divide the same into two parts in such a way that the value of one part should exceed the value of the other part by £30,000. By cl. 19, he directed the trustees to hold the smaller of such parts in trust for his son A, absolutely. By cl. 20 he directed his trustees to hold the larger of such parts in trust to pay the net annual income accruing to one equal half part thereof to B, the widow of his late son D, and subject to that trust to hold the said larger part upon trust for the children of D. The testator's executors paid all debts and death duties to legacies. Between July, 1938, and January, 1939, they appropriated to the settled share of residue investments which at the respective dates of appropriation had a book value of £35,812 7s. 1d. On the same dates they transferred to A the same nominal amount of the same investments. The residuary estate remaining in their hands consisted of a number of investments, having in August, 1939, a book value of £100,604 3s. 2d., and of a sum of £8,140 2s. 7d. cash. The investments had depreciated in value since the death of the testator. The depreciation by March, 1939, amounted to £18,125 15s. 9d. The trustees wished finally to divide the testator's residuary estate by appropriating to each share investments comprised in the estate. The executors took out this summons asking whether for the purpose of dividing the capital of the residuary estate the executors should proceed upon the basis of (*a*) the value of the residuary estate at the date of distribution attributing to the larger part investments and cash which on the basis of values at the date of distribution exceeded investments and cash attributed to the smaller part by £30,000; or (*b*) the value of the residuary estate as at the date of the testator's death and dividing the assets to be distributed between the larger share and the smaller share in the proportions borne by one moiety of such value plus the sum of £15,000, to one moiety of such value less the sum of £15,000.

BENNETT, J., said primarily the answer to the question raised by the summons depended upon whether the testator had given any directions as to when any valuation had to be made. The will contained no directions on this point. Therefore the general rule of administration, if there was one, must be applied. Almost the exact point came before Farwell, J., in *In re Gunther's Will Trusts; Alexander* v. *Gunther* [1939] Ch. 985; (1939), 83 SOL. J. 545, who held that the valuation should be made as at the death of the testator. He was there laying down a general rule of administration to be applied to the estate of a deceased person which was distributable upon death and in which only for the purposes of distribution a valuation of the property comprised in the estate had to be made. It was argued that the rule there laid down was inconsistent with established rules and with the decision of Simonds, J., in *In re Wills; Dulverton* v. *Macleod* [1939] Ch. 705; 83 SOL. J. 438. In that case the interests which became distributable were not vested at the death of the testator but were contingent and there was a long interval of time between death and distribution. In a case where there is an interval between death and distribution, if a valuation has to be made it may be that it should be made not at the date of death but at the date of distribution. Where distribution is to take effect at death, the valuation must be at that date. The present case was covered by Farwell, J.'s decision in *In re Gunther's Will Trusts, supra*, and accordingly the estate must be divided upon the basis of the value of the residuary estate at the date of the testator's death.

COUNSEL: *Andrewes Uthwatt; Wilfrid Hunt; Hillaby; Myles; Roger Turnbull; J. L. Stone.*

SOLICITORS: *Stafford Clark & Co.*, for *Ironside & Co.*, Leicester; *Field, Roscoe & Co.*, for *Whetstone & Frost*, Leicester.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Whiteman *v.* Z. B. Atkins (1940), Ltd.

Bennett, J. 28th August, 1940.

Lottery—Sale of tickets for competition—Prizes for best solution of crossword and prizes for sellers of largest number of tickets—Whether illegal as lottery—When injunction granted—Betting and Lotteries Act, 1934 (24 & 25 *Geo.* 5, *c.* 58), *ss.* 21, 22, 26.

The defendant company was formed with the object, *inter alia*, of promoting competitions of every kind and in particular of promoting a competition for the sale and distribution of National Savings Certificates. The company intended to promote the following competition: A person desirous of taking part in the competition was to purchase a 5s. ticket. He was then to send the ticket and £1 to certain trustees, receiving in exchange a National Savings Certificate which cost 15s. 6d. and a book of four 5s. tickets. He was entitled to sell, or to use the tickets for the purpose of obtaining additional certificates and books of tickets. All persons holding tickets on the 31st July, 1941, were to be entitled to enter free for a crossword competition which was to be advertised in the national press. The entries were to be judged by an expert adjudication committee and prizes were to be awarded in order of merit. The standard by which the entries were to be judged was to be the aptness and accuracy of the answers given in relation to the clues provided. The prize fund was to be divided as to 88 per cent. amongst the winners in the crossword competition and as to 12 per cent. amongst the purchasers of the greatest number of books of tickets. The plaintiff, who was a director of the defendant company, claimed against them a declaration that the proposed scheme for the sale of tickets in relation

to the crossword competition was illegal under the provisions of Pt. II of the Betting and Lotteries Act, 1934, and an injunction to restrain the defendants and their servants from proceeding with the said scheme. Section 21 of the Act provides that, subject to the provisions of Pt. II of the Act, all lotteries are unlawful. Section 22 provides that every person who prints, sells, distributes, advertises, etc., tickets for use in a lottery shall be guilty of an offence. Section 26 makes it an offence to conduct through any newspaper any competition success in which does not depend to a substantial degree upon the exercise of skill.

BENNETT, J., said that there was no doubt whatever that persons who offended against Pt. II of the Act of 1934 were criminals. A lottery had been defined as a distribution of prizes by lot or chance (*Coles* v. *Odhams Press, Ltd.* [1936] 1 K.B. 427). Here two competitions were proposed, one in relation to an alleged crossword competition, the other in relation to the sale of books of tickets. With regard to the crossword competition not enough information was forthcoming to decide whether the competition would or would not be a lottery. It might be possible to compose a crossword in which alternative words could be used, in which real skill and judgment might be exercised in choosing the word best related to the clue. When the puzzle had been framed and the expert adjudication committee nominated, it would be possible to say whether what was called a competition was or was not a lottery. As regards the second competition that was quite plainly a lottery, and if advertised in the press would be an offence against the provisions of s. 26 of the Act. No skill whatever was required to win the prize. No purchaser would know or could find out what the other purchasers were doing. The winning of a prize depended entirely upon whether one person happened to spend more than another in buying books of tickets. That scheme was a lottery and the promotion of it criminal. No injunction, however, would be granted as the plaintiff had not proved a cause of action. What the parties wanted was for the court to decide whether, if they embarked upon a certain course of action, they would commit a criminal offence. There was no threat by the defendants to promote the competition. The plaintiff was not really afraid that she would be exposed to penalties under the Act. If she was, she could resign her directorship and employ her time in another pursuit.

COUNSEL: *Robert Fortune; Beyfus*, K.C., and *Humphrey Edmunds.*
SOLICITORS: *Temple & Co.; Royce & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Parson's Settlement; Barnsdale *v.* Parsons.

Bennett, J. 28th August, 1940.

Infant—Donee of power to appoint trustees of a settlement—Power exercised—Whether appointment valid.

By an indenture of settlement made the 17th November, 1920, between P, the settlor, of the one part and H, the trustee, of the other part, certain shares were transferred to the trustee upon trust to apply the income arising therefrom for the maintenance, education and benefit of N, the infant son of the settlor, who was then only ten months old, until he should attain the age of twenty-five. The trustee was given power to pay the income to the father or mother of the infant when the infant attained the age of twenty-five; the trustee was to stand possessed of the shares upon trust for the infant absolutely. Clause 6 provided that the power of appointing new trustees should be vested in the settlor during his life and after his death in the infant, and after the death of the survivor in the trustee for the time being of the settlement. The settlor died in 1926. The trustee died in February, 1940, the trust funds being at this date of the approximate value of £20,000. By a deed of appointment of the 21st April, 1940, the infant, who was then twenty years of age, purported to appoint his mother to be sole trustee of the settlement. The plaintiffs, who were the executors of the original trustee, took out this summons asking whether or not the infant's mother had been validly appointed to be trustee of the settlement of 1920 having regard to the fact that the appointor was an infant.

BENNETT, J., said that the summons raised an interesting question of law upon which there was no authority. It was argued that the appointment was valid, first, on the ground that the power to appoint trustees was either a power in gross or a power collateral, and as such might be executed by an infant (*In re D'Angibau*, 15 Ch. D. 228). It had been held that an infant could exercise a power simply collateral as regards real and personal estate and a power in gross over personal estate. A power to appoint a new trustee, however, differed from a power to dispose of property in which an infant had no interest and from a power to dispose of property in which an infant had an interest, but an interest which could not be touched by the execution of the power. The power to appoint a trustee might vitally affect the infant's interests if he had a beneficial interest in the property, the subject of the trust. Secondly, it was argued that the settlement showed an intention that the infant should exercise the power notwithstanding infancy. If it did, the infant could execute the power (*In re Cardross's Settlement*, 7 Ch. D. 728). In the present case the infant was only ten months old when the settlement was executed. It was inconceivable that the settlor should have contemplated the exercise of the power by an infant of that age. The settlement showed no intention that the power should be exercised during infancy. The question had to be answered by reference to first principles. The law permitted infants to do binding acts (*a*) if they were for their own benefit, or (*b*) if they were for the benefit of others and did not prejudice themselves (*Zouch d. Abbot and Hallet* v. *Parsons*, 3 Bur. 1794). It necessarily followed that the law will avoid imprudent acts done by infants and acts done by infants for the benefit of others but prejudicial to their own interests. In the present case it was an imprudent act to appoint a sole trustee of a trust fund of £20,000. The court would never make such an appointment. Further, it was imprudent to appoint the infant's mother, for she must often find herself in a position where there would be a conflict between her duty and her interest. In executing the appointment the infant was touching his interest in the trust fund. He accordingly was not bound by the appointment and the mother had not been validly appointed.

COUNSEL: *Mendel; Gravenor Hewins.*
SOLICITORS: *Smallman & Son; Woolfe & Woolfe.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Hyett *v.* Lennard.

Macnaghten, J. 3rd May, 1940.

Revenue—Income tax—Expense incurred exclusively for trade—Shop given up—Sub-let for less than rent payable to landlord—Annual loss on rent—Whether deductible in computing profits—Income Tax Act, 1918 (8 & 9 *Geo.* 5, c. 40), *Sched. D, Cases I and II*, r. 3 (*a*).

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The subject, Lennard, was a tailor, carrying on several shops in London and its suburbs. In October, 1930, he opened a shop in Oxford Street, having taken it on a thirty-five-year lease at £3,500 a year without any option to determine the lease before the end of that period. In 1935 he closed the shop because it did not pay and succeeded ni sub-letting it for twenty-eight and three-quarter years at £2,500 a year. The shop had been taken only for the purposes of his business, and the sub-lease granted only in order to minimise the burden of the rent. In his profit and loss account for the year ending the 31st December, 1931, he entered the £3,500 paid as an expense and the £2,500 received as a receipt. The question was whether the resulting loss of £1,000 was admissible as an expense in computing the subject's profits of trade for assessment under Case I of Sched. D to the Income Tax Act, 1918. It was contended on his behalf that the loss was a disbursement wholly laid out for the purposes of his trade and that it was a proper debit to set against the receipts from his trade. The Crown contended that the £3,500, being in respect of premises which the subject had ceased to occupy for the purposes of his trade and which were no longer available for that purpose, was not money exclusively laid out for the purposes of the trade. The Special Commissioners decided that the £1,000 was deductible and the Crown appealed. By r. 3 (*a*) of the Rules applicable to Cases I and II of Sched. D, "In computing the profits . . . no sum shall be deducted in respect of—(*a*) any disbursements . . . not being . . . wholly . . . laid out . . . for the purposes of the trade . . ."

MACNAGHTEN, J., said that the authorities showed that a sum paid by a tenant to his landlords to induce them to accept surrender of the lease was not money paid exclusively for the trade within the meaning of r. 3 (*a*). The same applied to money paid to an assignee for accepting an assignment. Here, however, the sum which it was sought to deduct had had to be paid in fulfilment of an obligation undertaken for the purposes of the trade. In no other case had that position arisen except in *Inland Revenue Commissioners* v. *Falkirk Iron Co., Ltd.*, 17 T.C. 625. If the respondent had left the premises vacant for the rest of the period of the lease, he would have been entitled, as was conceded for the Crown, to deduct the £3,500 annually as an expense of trade. He had entered into obligations imposed on him by the lease for the purposes of his trade and those obligations continued to be expenses of the trade throughout the whole currency of the lease. The Crown agreed that, in the case of a contract of employment for a number of years with an obligation after the employee had attained a certain age to pay him a pension, the pension was an expense of the trade properly deductible from the receipts, although the employee was rendering no aid in the business. He (his lordship) was fortified in his view by the opinions of the Lord President and Lord Sands in *Inland Revenue Commissioners* v. *Falkirk Iron Co., Ltd., supra.* That decision did not precisely cover the present case, because there the period of the lease during which the company had to pay rent when they were not using the warehouse was something less than three years. Here the period was over twenty-eight years, and, whereas the Falkirk Iron Company had not parted with the possession of the whole of the premises, here a sub-demise of the whole of the leased premises had been granted for the full period of the lease, less five days. He did not see, however, that those differences made that case distinguishable from the present. He wished to refute the suggestion that his present decision was inconsistent with his decision in *Union Cold Storage Company* v. *Ellerker*, 55 T.L.R. 172; 83 SOL. J. 114; reversed C.A. [1939] 2 K.B. 440; 83 SOL. J. 315. The obligation to pay the £6,000 there did not

arise out of any contract made by the Union Cold Storage Company for the purposes of their business, but arose out of an agreement made with the London Midland and Scottish Railway Company for the surrender of the lease. That was the vital distinction. The appeal must be dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*; *Heyworth Talbot.*

SOLICITORS: *The Solicitor of Inland Revenue*; *E. FitzGerald Sargent.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Beare (Inspector of Taxes) *v.* Carter.

Macnaghten, J. 9th May, 1940.

Revenue—Income tax—Literary work—Author paid lump sum for new edition—Publisher granted exclusive right to publish copies of the new edition—Whether lump sum capital or income receipt—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D, Case VI.*

Appeal by case stated from a decision of Commissioners for the General Purposes of the Income Tax Acts.

One, Carter, was the author of a legal work, and in 1935 he arranged with the publishers for a sixth edition. It was agreed that Carter should be paid £150 for the licence to publish that edition of 1,050 copies, the £150 to include necessary editorial work. The copyright remained in Carter, who agreed to prepare the edition for press to the approval of the publishers. There was no written agreement at the time, but the terms of the agreement were subsequently set out in a letter dated 7th July, 1938, written to Carter at his request by the publishers. The Commissioners accepted Carter's evidence that the work entailed in bringing the sixth edition up to date was completed in about one and a half hours. Carter, having been assessed to income tax in the sum of £150 for literary profits under Case 6 of Sched. D to the income tax, objected, contending that the transaction was a capital one inasmuch as he had sold part of his rights in his book and that the £150 was a capital receipt. The Crown contended that the £150 was taxable as a profit or gain. The Commissioners decided in favour of Carter and the Crown now appealed.

MACNAGHTEN, J., said that on the facts the fair inference was that the licence to publish the sixth edition in consideration of the £150 carried with it the obligation on the part of Carter to give no licence to anybody else to publish the work for a period. There was no question of principle in the case. It was only a question whether, on the particular facts, there was no evidence which could support the decision of the Commissioners. If the £150 were merely a lump sum payment for permission to publish so many copies of the work, then, on the authorities, there was no doubt that the decision of the Commissioners would be wrong. If there were nothing in the present case but that the £150 was paid for permission to publish 1,050 copies of the book, *Inland Revenue Commissioners* v. *Longmans Green & Co., Ltd.*, 17 T.C. 272, would cover it. That decision conformed with *Curtis Brown, Ltd.* v. *Jarvis*, 14 T.C. 744, where Rowlatt, J., observed that copyright royalties were annual profits or gains, as being the annual receipts from the property, and not instalments of the purchase price, and also with *Mills* v. *Jones*, 46 T.L.R. 118, and *Constantinesco* v. *R.*, 43 T.L.R. 727, where it was laid down that a lump sum paid for the use of a patent would be properly treated as an annual profit or gain. The case relied on for Carter, which appeared to illustrate very well how fine was the distinction between payments to be regarded as capital and ones to be regarded as income, was *Inland Revenue Commissioners* v. *British Salmson Aero Engines, Ltd.*, 54 T.L.R. 904, where the total amount to be paid for the licence to manufacture a certain aero engine was £50,000, made up of £25,000 payable as to £15,000 on the signing of the agreement and as to £10,000 by instalments of £5,000 at the end of six or twelve months, and a further £25,000 payable at the rate of £2,500 each year. It was held that the £25,000 was a capital payment, but that the instalments of £2,500 were royalties or other sums paid in respect of the use of a patent, so that those payments must be subject to assessment to income tax. Applying that case to the present, and on the view which he (his lordship) had formed of the agreement between Carter and the publishers, it was sufficient to say that there was evidence to support the conclusion at which the Commissioners had arrived. The appeal must be dismissed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. P. Hills*; *L. C. Graham-Dixon.*

SOLICITORS: *The Solicitor of Inland Revenue*; *Emmet & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Peirse-Duncombe Trust *v.* Inland Revenue Commissioners.

Macnaghten, J. 23rd May, 1940.

Revenue—Income tax—Annuities charged on income—Capital of residuary estate insufficient—Payment of annuities in full out of capital—Liability to tax—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *All Schedules Rules, r.* 21.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

By his will, made in 1908, a testator gave to his wife and younger children annuities amounting to £5,400, directing his trustees to set apart out of his residuary estate sufficient investments to produce that sum. The testator having died in 1910, the trustees disregarded that direction; but the income of the residuary estate was much more than enough for the annuities, which the trustees accordingly paid out of it, paying the balance of income to the residuary legatees. As and when any annuitant died, the trustees made distributions of capital equivalent to the capital representing the annuities in question, instead of retaining that capital to meet any depreciation of the residuary estate. By 1931, owing to a fall in the value of stocks, the residuary estate then remaining was insufficient to pay the only remaining annuities, amounting to £1,650. The trustees did not, however, create the annuities, but borrowed a sum which enabled them to pay in full all of them except that of the testator's daughter, Elizabeth, by whom most of the sum borrowed was provided. By 1935 there was owing to Elizabeth £1,962 for arrears of annuity in addition to the sum which she had lent. Accordingly a deed of arrangement was entered into by all those interested in the testator's estate. The trustees were thereby authorised to retain the investments in their existing form so long as they thought fit, and to sell part of those investments if necessary to supplement the income from them in order to meet the annuities in full. In May, 1935, the trustees sold a certain amount of stocks in order to repay Elizabeth her loan and the arrears of annuity. The trustees having appealed against assessments made on them in the five years ending the 5th April, 1937, under r. 21 of the All Schedules Rules of the Income Tax Act, 1918, as amended by s. 26 of the Finance Act, 1927, in respect of sums paid to the annuitants, and the Special Commissioners having decided in favour of the Crown, the trustees now appealed.

MACNAGHTEN, J., said that the question at issue was whether income tax was chargeable in respect of the sums which the trustees had paid to the annuitants otherwise than out of the income of the trust estate. The appellants contended that anything paid to the annuitants in excess of the income of the trust estate was capital in the hands of the trustees and also of the annuitants, and that the assessments should therefore be discharged. The Crown contended that anything paid to the annuitants constituted an annuity, and that, in so far as anything was paid out of profits not brought into charge to tax, it must be assessed under r. 21, as amended. The will provided that, until the setting apart of the investments (which the trustees had never effected) the annuitants should receive the equivalent of their annuities out of the income of the residuary estate. The appellants therefore argued that any payments in excess of that income after it had become insufficient to answer the annuities were voluntary payments by the trustees which could not be regarded as annuities. It was conceded for the appellants that the assessments could not be challenged in respect of payments made after the deed of arrangement, because it charged the remaining annuities on the income and the capital in the trustees' hands (*Brodie's Trustees* v. *Inland Revenue Commissioners*, 17 T.C. 432); and counsel for the Crown had referred to Lord Russell of Killowen's speech in *Williamson* v. *Ough*, 20 T.C. 194. With regard to the payments made before the deed, the moneys first borrowed for payment of the annuities were capital in the trustees' hands: were they capital in those of the annuitants? The annuities had been paid in full, and he (his lordship) thought that the trustees must account to the revenue authorities for the sums which they had deducted on so paying the annuities. Finally, it was argued that since, when the time came for distribution of the remainder of the stocks, Elizabeth would be entitled to 21/40ths of it (her share of the residuary estate), the payments made to her in respect of her annuity ought to be regarded, not as payments of annuity, but as payments on account of capital sums to which she would be entitled; and counsel relied on *Brodie's Trustees* v. *Inland Revenue Commissioners*, *supra*, at pp. 438, 439. There, however, the capital in question belonged to the recipients of the payments, whereas here Elizabeth was not yet entitled to the capital; and capital and income were both charged with payment of the annuities. The appeal failed.

COUNSEL: *King*, K.C., and *Borneman*; *The Solicitor-General* (Sir Terence O'Connor, K.C.); *J. H. Stamp* and *R. P. Hills.*

SOLICITORS; *Bell, Brodrick & Gray*; *The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL.

R. *v.* Carmichael.

Charles, Macnaghten and Oliver, JJ. 19th March, 1940.

Criminal law—Incest—Evidence admissible to show that woman not accused's daughter.

Appeal from conviction.

The appellant was convicted at the Central Criminal Court of incest with his daughter, Sonia May Carmichael, and sentenced to two years' imprisonment. Carmichael was first married in 1912. In August, 1914, his wife went to Cambridge, where she became associated with one, West, while he (Carmichael) was away a great deal. On the 18th May, 1915, the girl Sonia was born. Carmichael's wife then telling him that she was not his child. In 1916 Carmichael divorced his wife on the ground of her adultery with West. In 1918 Carmichael married again, and in 1926 Sonia and her sister went to live with him and his second wife. In 1933 Carmichael and his second wife separated and he lived with the girl Sonia in lodgings. To the world their relations changed from those of father and daughter to those of husband and wife. The girl had four children by Carmichael. It was argued for

the appellant (*a*) that Wrottesley, J., was wrong in law in applying the rule in *Russell* v. *Russell* [1924] A.C. 687, and holding that no statement by Carmichael or his first wife which tended to bastardise any issue of that wife born in wedlock could be admitted; and (*b*) that the judge misdirected the jury in his summing up when he told them to disregard all statements made by Carmichael or his first wife which tended to bastardise Sonia.

CHARLES, J., giving the judgment of the court (*cur. adv. vult*), said that in the opinion of the court Wrottesley, J., had wrongly excluded the evidence which the appellant had wished to give. Evidence by the appellant that his first wife had told him that he was not the father of Sonia was no evidence that he was not in fact her father and was irrelevant and inadmissible on the question of the paternity of the child. But, although that evidence was irrelevant to the question of the paternity of Sonia, it was plainly relevant to the question whether Carmichael knew that Sonia was his daughter, since, if the jury were satisfied (1) that Sonia's mother did in fact tell Carmichael that he was not the child's father, and (2) that Carmichael believed her statement to be true, they would have been bound to return a verdict of acquittal. By the exclusion of the evidence Carmichael was deprived of the right to substantiate his plea that Sonia was not to his knowledge his daughter. To preclude a defendant on his trial from giving evidence of his belief and the ground for it seemed to the court to deprive him of one of the most elementary rights of an accused person and to be a negation of justice where the proof of knowledge or no knowledge was vital to conviction or acquittal. The exclusion of the evidence also led to the curious result that, while Carmichael was permitted to deny on oath that he knew Sonia to be his daughter, not only was he precluded from giving his reasons for believing that he was not her father, but the Crown was also precluded from cross-examining him as to the reasons for his alleged belief. Moreover, evidence of admissions by Carmichael that Sonia was his child had been adduced on behalf of the Crown, yet statements to the contrary by him which might have explained away those admissions were by Mr. Justice Wrottesley's ruling excluded. The rule in *Russell* v. *Russell, supra*, did not preclude Carmichael from giving any relevant evidence in support of his plea that he did not believe that Sonia was his daughter, including an admission or confession by her mother. While there was evidence on which the jury might have convicted Carmichael, the court could not say that, if the evidence which was ruled out had been given, they would have done so, and the court had accordingly allowed the appeal and quashed the conviction.

COUNSEL: *Edward Clarke; Gerald Howard.*

SOLICITORS: *The Registrar of Court of Criminal Appeal; The Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 14th September, 1940.*)

STATUTORY RULES AND ORDERS.

No. 1336. **Additional Import Duties** (No. 5) Order, September 5, 1940. (Amendment of Additional Import Duties (U.S.A. Agreement) Order, 1938.)

No. 1337. Additional Import Duties (No. 6) Order, September 5. (Amendments of Additional Import Duties (U.S.A. Agreement) Order, 1938.)

E.P. 1621. **Condensed Milk and Milk Powder** (Control) Order, 1940. Amendment Order, September 4.

E.P. 1622. Condensed Milk (Canned) (Maximum Prices) Order, September 4.

E.P. 1623. Condensed Milk (Bulk) (Maximum Prices) Order, September 4.

E.P. 1628. **Control of Molasses and Industrial Alcohol** (No. 10) Order, September 5.

E.P. 1615. Control of Native Cattle Hides (No. 1) Order, September 3.

E.P. 1627. Control of Paper (No. 23) Order, September 5.

E.P. 1626. Control of Tanned Kips (No. 1) Order, September 5.

E.P. 1611. **Defence** (General) Regulations, 1939. Order in Council, September 4, 1940, adding Regulations 45c and 102A and amending Regulations 4AA, 46B, 62, 62A, 66, 73 and 84A.

E.P. 1612. Defence (Parliamentary Under-Secretaries) Regulations, 1940. Order in Council, September 4, 1940, amending Regulation 2 and adding Regulation 3.

E.P. 1613. Defence (Local Defence Volunteers) Regulations, 1940. Order in Council, September 4, 1940, amending Regulation 2.

E.P. 1614. Defence (Armed Forces) Regulations, 1939. Order in Council, September 4, 1940, adding Regulation 6.

E.P. 1616. Defence (War Risks Insurance) (No. 4) Regulations, 1940. Order in Council, September 4, 1940.

No. 1618. **Export of Goods** (Control) (No. 33) Order, September 4.

No. 1637. Export of Goods (Control) (No. 34) Order, September 10.

E.P. 1630. **Frozen Eggs** (Maximum Prices) Order, 1940. Amendment Order, September 5.

E.P. 1631. **Home Grown Dredge Corn** (Control and Maximum Prices) Order, September 5.

E.P. 1632. Home Produced Eggs (Maximum Prices) (No. 3) Order, 1940. Authorisation, September 4.

No. 1624. **National Health Insurance** (Approved Societies) Amendment Regulations, July 15.

E.P. 1620. **Oranges** (Maximum Prices) Order, 1940. Amendment Order, September 4.

No. 1617. **Prevention of Fraud** (Investments) Act Licensing (Amendment) (No. 2) Regulations, August 31.

No. 1619. **South Cumberland Rivers Catchment Board** Constitution Order, September 2.

No. 1625. **Trading with the Enemy** (Specified Areas) (No. 3) Order, September 4.

[E.P. indicates that the Order is made under Emergency Powers.]

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Wills and Bequests.

Mr. Charles Holwell Ward, barrister-at-law, of Forde Park, Newton Abbot, left £86,696, with net personalty £84,718.

Mr. John Witts Allen Woodroffe, solicitor, of Cornwall Gardens, S.W., and Norfolk Street, W.C., left £182,879, with net personalty £165,919.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 26th September, 1940.

	Div. Months.	Middle Price 18 Sept. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	109½	3 13 1	3 4 7
Consols 2½%	JAJO	73⅛	3 8 3	—
War Loan 3% 1955–59	AO	100	3 0 0	3 0 0
War Loan 3½% 1952 or after	JD	101	3 9 4	3 7 11
Funding 4% Loan 1960–90	MN	113	3 10 10	3 2 4
Funding 3% Loan 1959–69	AO	97⅛	3 1 6	3 2 8
Funding 2½% Loan 1952–57	JD	97⅛	2 16 5	2 18 10
Funding 2½% Loan 1956–61	AO	90⅜	2 15 1	3 2 3
Victory 4% Loan Average life 21 years	MS	110	3 12 9	3 6 6
Conversion 5% Loan 1944–64	MN	109⅛	4 11 4	2 1 10
Conversion 3½% Loan 1961 or after	AO	100	3 10 0	3 10 0
Conversion 3% Loan 1948–53	MS	101⅛	2 19 3	2 16 1
Conversion 2½% Loan 1944–49	AO	99	2 10 6	2 12 8
National Defence Loan 3% 1954–58	JJ	101⅛	2 19 3	2 17 9
Local Loans 3% Stock 1912 or after	JAJO	86	3 9 9	—
Bank Stock	AO	329	3 12 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	86⅛	3 9 4	—
India 4½% 1950–55	MN	107⅛	4 3 9	3 11 1
India 3½% 1931 or after	JAJO	91⅜	3 16 3	—
India 3% 1948 or after	JAJO	79⅛	3 15 8	—
Sudan 4½% 1939–73 Average life 27 years	FA	107	4 4 1	4 1 3
Sudan 4% 1974 Red. in part after 1950	MN	105	3 16 2	3 14 7
Tanganyika 4% Guaranteed 1951–71	FA	108	3 14 1	3 1 2
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91	2 14 11	3 5 5
COLONIAL SECURITIES.				
•Australia (Commonwealth) 4% 1955–70	JJ	103	3 17 8	3 14 9
Australia (Commonwealth) 3½% 1964–74	JJ	88	3 13 10	3 17 10
Australia (Commonwealth) 3% 1955–58	AO	87xd	3 9 0	4 0 8
•Canada 4% 1953–58	MS	110	3 12 9	3 1 3
New South Wales 3½% 1930–50	JJ	94	3 14 6	4 5 8
New Zealand 3% 1945	AO	94½	3 3 6	4 7 10
Nigeria 4% 1963	AO	104xd	3 16 11	3 14 9
Queensland 3½% 1950–70	JJ	93	3 15 3	3 18 1
•South Africa 3½% 1953–73	JD	99½	3 10 4	3 10 6
Victoria 3½% 1929–49	AO	95	3 13 8	4 3 8
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	79½	3 15 6	—
Croydon 3% 1940–60	AO	91	3 5 11	3 12 10
Leeds 3½% 1958–62	JJ	94	3 9 2	3 13 1
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	92	3 16 1	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	81	3 14 1	—
London County 3½% 1954–59	FA	100½	3 9 8	3 9 1
Manchester 3% 1941 or after	FA	79½	3 15 6	—
Manchester 3% 1958–63	AO	91⅛xd	3 5 7	3 10 10
Metropolitan Consolidated 2½% 1920–49	MJSD	97	2 11 7	2 17 5
Met. Water Board 3% "A" 1963–2003	AO	82½	3 12 9	3 14 5
Do. do. 3% "B" 1934–2003	MS	84½	3 11 0	3 12 6
Do. do. 3% "E" 1953–73	JJ	88	3 8 2	3 12 7
Middlesex County Council 3% 1961–66	MS	91⅛	3 5 7	3 10 3
•Middlesex County Council 4½% 1950–70	MN	105½	4 5 4	3 15 4
Nottingham 3% Irredeemable	MN	80	3 15 0	—
Sheffield Corporation 3½% 1968	JJ	97⅛	3 11 10	3 12 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	102	3 18 5	—
Great Western Rly. 4½% Debenture	JJ	108½	4 2 11	—
Great Western Rly. 5% Debenture	JJ	112½	4 8 11	—
Great Western Rly. 5% Rent Charge	FA	110½	4 10 6	—
Great Western Rly. 5% Cons. Guaranteed	MA	105½	4 14 9	—
Great Western Rly. 5% Preference	MA	77	6 9 10	—

• Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.